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FIRST APPEAL NO. 288 of 1996

Date of Decision : 24.6.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R.DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?

5. Whether it is to be circulated to the Civil Judge ?

Mr Darshan Parikh , learned Advocate for the Appellant

Mr.Ajay Mehta , learned Advocate for the Opponents

CORAM : N.J.PANDYA & A.R DAVE,JJ.

24.6.1996

ORAL JUDGMENT ; [ PER ; PANDYA, J ]

Admit. With the consent of the learned Advocates appearing for the parties, the matter is taken up for final hearing today.

The appeal is mainly with regard to the quantum. For this, in our opinion, the appellant Company does have a case

especially when by way of supporting material, average monthly income of Rs. 4000/= is determined. Two note-books containing the accounts are relied upon. They are exhibits nos. 24 & 25 before the trial court. They are kept by brother-in-law (Sadhu) of the deceased and who has been examined at Exh. 23. Then, there is out claim towards future economic loss and on that basis, the learned Judge has said that when current income was Rs. 4000/=, the future income should be taken to be Rs. 5000/= and a mean is struck by taking the base figure at Rs. 4500/.

Nodoubt, a sum of Rs. 1500/= has been deducted therefrom towards personal expenses of the deceased leaving the balance amount of Rs. 3000/=, there is a scope for further reduction to the extent of Rs. 250/= in this figure of Rs. 3000/= and on that basis, if the figure is worked out, in our opinion, the interest of justice would be served. This would bring about reduction of Rs. 45,000/= leaving the balance amount of Rs. 4,95,000/=. The rest of the award remains as it is. This would mean that costs and interest as awarded will remain the same with proportionate reduction in view of said reduction in amount towards future economic loss.

Appeal is partly allowed accordingly. A sum of Rs. 25000/= lying with the Registry of this Court is ordered to be transferred to the trial Court. If the amount is not deposited, it should be done within four weeks from today. On the amount being thus deposited along with the said sum of Rs. 25,000/=: it shall be dealt with in accordance with the order of the Tribunal. Rs. 45,000/- an additional sum on account of said reduction, lying with the tribunal is ordered to be refunded back to the Insurance Company with proportionate costs and interest.